



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Christina Moschella

Appl. No.: 10/775,954

Filed: February 11, 2004

For: **Privacy Shade**

Confirmation No.: 1663

Art Unit: 3634

Examiner: Blair M. Johnson

Atty. Docket: 2255.0010001/DRB

Brief On Appeal Under 37 C.F.R. § 41.37

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A Notice of Appeal from the final rejection of claims 1, 7-11, and 17-28 for the above-captioned U.S. patent application was filed on September 14, 2005. Appellant hereby files one copy of this Appeal Brief, together with the required brief filing fee of \$250.00 under 37 C.F.R. § 41.20(b)(2) for a small entity.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to our Deposit Account No. 19-0036.



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I. Real Party in Interest (37 C.F.R. § 41.37(c)(1)(i))

The real party in interest is the Appellant, Christina Moschella. Appellant has not assigned the above-captioned patent application.

II. Related Appeals and Interferences (37 C.F.R. § 41.37 (c)(1)(ii))

Appellant, including the undersigned legal representative, is aware of no pending appeals, interferences or judicial proceedings that will directly affect, or be directly affected by, or have a bearing on the Board of Patent Appeals and Interferences ("the Board") in the pending appeal.

III. Status of the Claims (37 C.F.R. § 41.37 (c)(1)(iii))

This application was filed on February 11, 2004 and assigned U.S. Application No. 10/775,954 ("the '954 application"). The '954 application claims priority from Provisional Application No. 60/446,763, filed February 12, 2003. The '954 application included claims 1-20.

Claims 1, 7-11, and 17-28 are currently pending in the present application; claims 2-6 and 12-16 have been canceled without prejudice to or disclaimer of the subject matter therein. Claims 21-28 were added by amendment on March 22, 2005.

Claims 1, 7-11, and 17-28 are rejected.

Claims 1, 7-11, and 17-28 are on appeal. A copy of the claims on appeal can be found in the attached Claims Appendix.

IV. Status of Amendments (37 C.F.R. § 41.37(c)(1)(iv))

No amendments have been filed by Appellant subsequent to the Examiner's Final Rejection.

V. Summary of Claimed Subject Matter (37 C.F.R. § 41.37(c)(1)(v))

The present invention is directed to a privacy shade that provides quick concealment of information displayed on a screen of a computer monitor or a viewing area of a display device. Claims 1 and 11 are the independent claims.

As shown in FIGs. 1-5 of the above-captioned patent application, the privacy shade of the present invention comprises a piece of lightweight, flexible material 100 of a shape and size to cover the screen or viewing area 102 of a computer monitor or display device 104 and provide concealment of the information displayed on computer monitor or display device 104 when material 100 is in a down position 112. Material 100 is attached to a top portion 106 of computer monitor or display device 104 by a hook and loop fastener 120 such that material 100 covers the front of screen or viewing area 102 when material 100 is in down position 112. In one embodiment, one portion of hook and loop fastener 120 is placed on the center of top portion 106 of computer monitor or display device 104, and the other portion of hook and loop fastener 120 is placed on the center of a top portion of flexible material 100. Flexible material 100 may be accordingly attached to computer monitor or display device 104 by placing the two portions of the hook and loop fastener together. In an alternate embodiment, multiple hook and loop fasteners 130 may be used along top portion 106

of computer monitor or display device 104, such as a hook and loop fastener at both the right and left ends of top portion 106.

Due to the easy maneuverability of the privacy shade of the present invention, the shade may be used on an as needed basis, such as is required in the medical industry, as a way to conceal private medical information from unauthorized people in seconds. As discussed in the background section of the invention, the medical industry requires protection of health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA requires that physical safeguards be implemented to insure that health information is protected. The privacy shade of the present invention provides a physical safeguard as required, which also meets medical industry standards.

In order to be utilized and accepted in the medical industry, the product must be able to meet certain conditions. For example, the product must be capable of being quickly removed and replaced, such as from a monitor in a lab, hospital, or office, if blood or urine or the like is splattered on it. According to the present invention, the privacy shade can be quickly and safely removed and replaced by lifting off the shade from the hook and loop fastener attached to the monitor and replacing it with a clean shade. Additionally, periodic washing of the product will be necessary in a medical environment. The privacy shade of the present invention, made of a lightweight, flexible material, such as cotton or a cotton blend, requires no special washing instructions and can be included with a regular wash cycle that includes sheets, lab coats, etc.

VI. Grounds of Rejection to be Reviewed on Appeal (37 C.F.R. § 41.37(c)(1)(vi))

There is one ground of rejection to be reviewed on appeal.

Claims 1, 7-11 and 17-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,188,450 to Coons ("the Coons patent"; attached hereto as Exhibit A) in view of U.S. Patent No. 5,499,793 to Salansky ("the Salansky patent"; attached hereto as Exhibit B).

A copy of each of the aforementioned documents is attached for the Board's convenience.

VII. Argument (37 C.F.R. § 41.37(c)(1)(vii))

The Coons patent does not disclose attachment of a lightweight, flexible material to a top portion of a computer monitor or display device, as claimed, or the use of a hook and loop fastener, as claimed, for such attachment. In the advisory action mailed November 25, 2005, the Examiner argues that,

it would have been well within the purview of one of ordinary skill in the art to attach the cover/shade 21 of Coons to the top of the computer monitor with hook and loop (provided by Salansky), either directly, i.e. placing the hook and loop directly on the cover 21 and monitor top, or indirectly, i.e. using hook and loop to mount the cover 16a, 16b, (using the hook/loop for the side flap closures 19a, 19b) to the monitor, which clearly renders the cover/shade "attached to the top portion of the computer monitor."

(See Continuation Sheet (PTOL-303) of November 25, 2005 Advisory Action).

However, as discussed below, the Salansky patent does not provide motivation or suggestion for attachment of screen shield 21 of Coons to the top portion of a computer monitor with a hook and loop fastener as the Examiner suggests.

A. The Examiner Bears the Burden of Establishing a *Prima Facie* Case of Obviousness

In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a *prima facie* case of obviousness based upon the prior art. *In re Piasecki*, 745 F.2d 1468, 1471-73, 223 U.S.P.Q. 785, 787-88 (Fed. Cir. 1984). The Examiner has failed to meet this burden. Without more evidence of unpatentability, Appellant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

MPEP § 2142 (citing to *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991)).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed

invention to have been obvious in light of the teachings of the references."

MPEP § 2142 (citing to *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985)).

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992).

As the Federal Circuit has stated,

an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability."

In re Rouffet, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998) (citing to *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 U.S.P.Q.2d 1551, 1554 (Fed. Cir. 1996)).

Rather, to establish obviousness based on a combination of references, there must be some motivation, suggestion or teaching of the desirability of making the specific combination. See *In re Dance*, 160 F.3d 1339, 1343, 48 U.S.P.Q.2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). There must be some reason for the combination other than hindsight

gleaned from the invention disclosure. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1985).

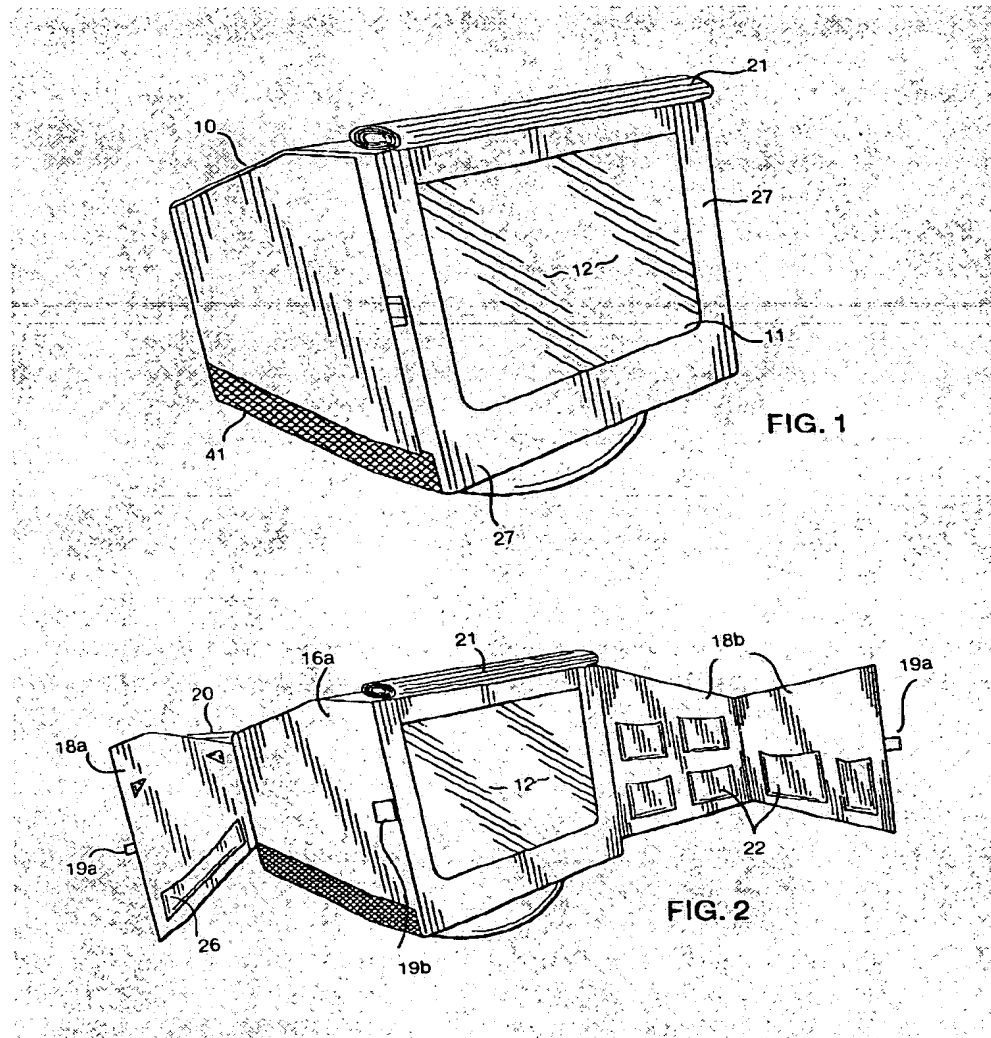
The Examiner has not adequately supported the combination of the cited references to render obvious the claimed invention. The Examiner has failed to show that one of ordinary skill in the art would have been motivated by the combined teachings of the cited references in a manner that would have resulted in the claimed invention. Appellant appeals the Examiner's rejection on the ground that a *prima facie* case of obviousness has not been established.

B. A *Prima Facie* Case of Obviousness Has Not Been Established with respect to Claims 1, 7-11 and 17-28

In the remarks that follow, Appellant focuses on independent claims 1 and 11, as any claim that depends from a patentable independent claim is also patentable by virtue of its dependency. Claims 7-10 and 17-28 depend from independent claims 1 and 11 and are patentable for at least the reasons discussed below.

Claims 1, 7-11 and 17-28 are directed to a privacy shade for concealment of information displayed on a screen of a computer monitor or a viewing area of a display device. These claims cover the embodiments discussed in Section V, above.

Independent claims 1 and 11 require that a piece of lightweight, flexible material is attached to a top portion of a computer monitor or display device by a hook and loop fastener. The Coons patent does not disclose attachment of a lightweight, flexible material to a top portion of a computer monitor or display device, as claimed, or the use of a hook and loop fastener, as claimed, for such attachment.



FIGS. 1 and 2 of the Coons patent

Contrary to the Examiner's contention, the Coons patent does not disclose "a privacy shade 21 attached to the top of a monitor." (see June 14, 2005 Office Action at 2). In fact, the Coons patent provides no motivation or suggestion to attach screen shield 21 to any part of monitor 11. Rather, Col. 4, ln. 25-35 of the Coons patent disclose that screen shield 21 is secured to the top front corners of side covers 16a, 16b, which are, in turn, secured in place *on the sides* of monitor 11 by use of securing

straps 28 and/or held in place by the addition of screen frame piece 27, which, as shown in Fig. 1 is disposed *on the front* of monitor 11. Contrary to the Examiner's contention, the specification of the Coons patent and Figs. 1 and 2 of the Coons patent, reproduced above, make it clear that the Coons patent *does not* disclose *attachment* of screen shield 21 to a *top portion* of computer monitor 11, as required by the claimed invention.

Appellant disagrees with the Examiner's contention that securing screen shield 21 to the top front corners of side covers 16a, 16b and mounting side covers 16a, 16b *on the sides* of the monitor 11 "clearly renders the cover/shade 'attached to the top portion of the computer monitor.'" (See Continuation Sheet (PTOL-303) of November 25, 2005 Advisory Action). On the contrary, this arrangement eliminates the need for screen shield 21 to be attached to the top portion of the computer monitor, as side covers 16a, 16b are otherwise secured to the monitor.

Further, the Examiner incorrectly argues that "the use of a shade of Coons alone without the entire cover is clearly obvious." (see June 14, 2005 Office Action at 3). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780, 1783-84 (Fed. Cir. 1992). There is no embodiment in the Coons patent in which screen shield 21 is used alone. Additionally, there is no suggestion or motivation in the Coons patent to use screen shield 21 alone. Rather, use of screen shield 21 alone, as the examiner suggests, would destroy the teaching of the Coons

patent, namely, that screen shield 21 is secured to the top front corners of side covers 16a, 16b. The arrangement disclosed in the Coons patent teaches away from the direct attachment of screen shield 21 to the top portion of the computer monitor claimed in the present invention.

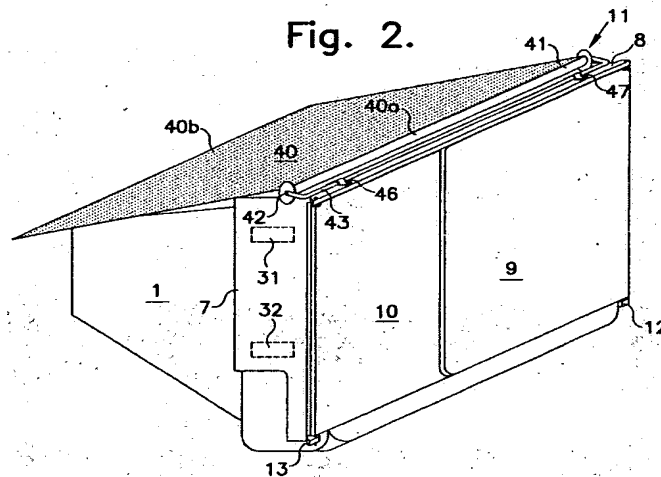
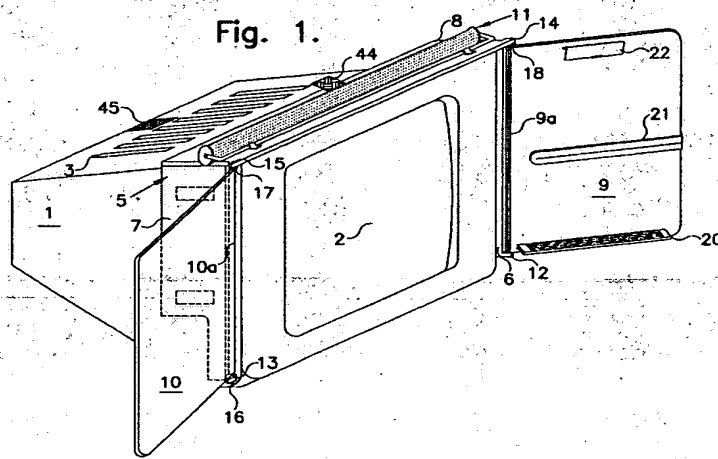
The Examiner relies on the Salansky patent for the general disclosure of "the use of hook and loop fasteners or adhesive, column 5, lines 5-13, for attaching computer accessories to the computer monitor." (See June 14, 2005 Office Action at 2). The Examiner argues that, "In view of this teaching, it would have been obvious to use such fasteners to attach the cover 21 of Coons to the monitor, either directly or through further attachment to covers 16a, 16b." (See June 14, 2005 Office Action at 2). However, there is no teaching or suggestion in the Salansky patent to modify the structure of the Coons patent, as the Examiner has suggested, and attach screen shield 21 to a top portion of computer monitor 11 with hook and loop fasteners. The Examiner provides no motivation or suggestion, other than impermissible hindsight based on Appellant's disclosure that would lead one of ordinary skill in the art to modify the Coons patent in this manner.

As the Federal Circuit has held numerous times, this type of hindsight analysis is impermissible -- to support a *prima facie* case of obviousness, the suggestion or motivation to make and use a claimed invention must come from the prior art itself, and not from Appellant's own teachings. *See In re Pleuddemann*, 910 F.2d 823, 828, 15 U.S.P.Q.2d 1738, 1742 (Fed. Cir. 1990) (noting that use of an applicant's specification as though it were prior art to support an obviousness determination is

legal error); *see also In re Vaeck*, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991) (stating that both the suggestion and reasonable expectation of success in making a claimed composition "must be founded in the prior art, not in the applicant's disclosure"). "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 972 F.2d at 1266, 23 U.S.P.Q.2d at 1784.

Like the Coons patent, the Salansky patent does not disclose attachment of a lightweight, flexible material to a top portion of a computer monitor or display device, as claimed. Rather, the Salansky patent discloses a document holder having panels 9,10 for supporting standard and/or legal sized paper and a retractable cover assembly 11, which are connected to a frame 5 for attachment to a computer monitor. Frame 5 consists of first end member 6, second end member 7 and upper member 8. Retractable cover assembly 11 is mounted to upper member 8 for covering vent openings 3 in video monitor 1¹, as shown in FIGs. 1 and 2, reproduced below. Retractable cover assembly 11 consists of flexible cover 40, mounted at end 40a to hollow cylindrical member 41, axle 42, and axle mounting extension 43. Securing flexible cover 40 to hollow cylindrical member 41 of retractable cover assembly, mounting retractable cover assembly 11 to upper member 8 of frame 5, and mounting frame 5 to monitor of the Salansky patent, eliminates the need for flexible cover 40 to be attached to the top portion of monitor 1.

¹ Appellant notes that the Salansky patent does not suggest the use of flexible cover 40 to cover screen 2 of monitor 1. Rather, the Salansky patent appears to suggest the use of panels 9,10 to cover screen 2 of monitor 1, as shown in FIG. 2.



FIGS. 1 and 2 of the Salansky patent

In view of the teaching of side panels 16a, 16b in the Coons patent and attachment frame 5 of the Salansky patent, there is no motivation or suggestion in either cited reference for attaching a lightweight, flexible material to a *top portion* of a computer monitor or display device, as claimed.

Additionally, the Salansky patent does not provide motivation or suggestion to use hook and loop fasteners to mount the cover 16a, 16b of the Coons patent to a

monitor. Unlike the Coons patent, the Salansky patent does not disclose attaching holders for storing supplies to a framework. As such, one of ordinary skill in the art would not have been motivated by the Salansky patent to modify the framework of the CRT cover disclosed in the Coons patent as the Examiner suggests (e.g. using hook and loop fasteners for the side flap closures 19a, 19b in the Coons patent).

In fact, due to the various sizes, contours and indentations of monitors, the use of hook and loop fasteners would not be an effective source for securing the screen shield 21 and the other elements of the framework of the CRT cover disclosed in the Coons patent to the monitor. The use of hook and loop fasteners would likely not withstand the weight of holders 22 and the like, which are mounted to the framework of the CRT cover disclosed in the Coons patent for storing supplies. (see col. 3, ln. 44-51). In fact, it appears that Coons anticipated the ineffectiveness of hook and loop fasteners, in that the Coons patent describes other methods of securing the panels to the monitor. The Coons patent at col. 4, ln 25-35 discloses that screen shield 21 is secured to the top front corners of side covers 16a, 16b, which are, in turn, secured to the monitor by use of securing straps 28 and/or held in place by the addition of screen frame piece 27. While the Coons patent describes the use of VELCRO for holding and mounting text holders 26 or holders 22 to the framework of the CRT cover, it appears he recognized that VELCRO would not be an effective way to attach the framework of the CRT cover, including screen shield 21, to a monitor.

Accordingly, the Coons patent, alone or in combination with the Salansky patent, fails to disclose attachment of a lightweight, flexible material to a top portion

of a computer monitor or display device, as claimed, and provides no motivation or suggestion for the use of a hook and loop fastener for such attachment.

For at least the foregoing reasons, the Examiner has not met the burden required to sustain a *prima facie* case of obviousness of independent claims 1 and 11. Accordingly, the rejection of claims 1 and 11 and claims 7-10 and 17-28 that depend therefrom, under 35 U.S.C. § 103, is improper and should be reversed.

C. The Examiner Has Failed to Address the Additional Limitations Recited in Dependent Claims 21-24

Appellant notes that the Examiner has not specifically addressed new claims 21-24 that were presented in Appellant's March 22, 2005 Amendment and Reply. In particular, the Examiner's conclusory allegation that, "[t]he location of the hook and loop fasteners is also an obvious design choice dictated by providing adequate support," does not provide a *prima facie* case of obviousness with respect to the additional limitations recited in claims 21-24. (See June 14, 2005 Office Action at 2).

Dependent claims 21 and 22 further require that one portion of the hook and loop fastener is placed on the center of the top portion of the computer monitor or display device and the other portion of the hook and loop fastener is placed on the center of the top portion of the lightweight, flexible material.

Dependent claims 23 and 24 further require that the lightweight, flexible material is attached to a top portion of the computer monitor or display device by a first hook and loop fastener and a second hook and loop fastener, wherein one portion of the first hook and loop fastener is placed on a right end of the top portion of the computer monitor or display device and the other portion of the first hook and loop

fastener is placed on a right end of a top portion of the lightweight, flexible material, and wherein one portion of the second hook and loop fastener is placed on a left end of the top portion of the computer monitor or display device and the other portion of the second hook and loop fastener is placed on a left end of a top portion of the lightweight, flexible material.

As discussed above, neither of the cited references provide motivation or suggestion for attaching a lightweight, flexible material to a *top portion* of a computer monitor or display device, as claimed. Additionally, in view of the teaching of side panels 16a, 16b in the Coons patent and attachment frame 5 of the Salansky patent, there is no motivation or suggestion in either cited reference for attaching a lightweight, flexible material *directly* to a top portion of a computer monitor or display device, as recited in claims 21-24, such that one portion of a hook and loop fastener is placed on a top portion of a computer monitor or display device and the other portion of the hook and loop fastener is placed on a top portion of the lightweight, flexible material.

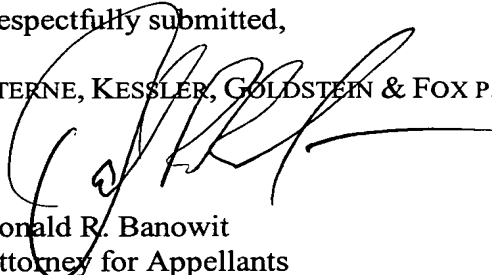
For at least the foregoing reasons, the Examiner has not met the burden required to sustain a *prima facie* case of obviousness of dependent claims 21-24. Accordingly, the rejection of dependent claims 21-24, under 35 U.S.C. § 103, is improper and should be reversed.

VIII. Conclusion

The subject matter of claims 1, 7-11 and 17-28 is patentable over the cited art because the Examiner has failed to make a *prima facie* case of obviousness. Therefore, Appellants respectfully request that the Board reverse the Examiner's final rejection of these claims under 35 U.S.C. § 103 and remand this application for issue.

Respectfully submitted,

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-A1-
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Claims Appendix

1. A privacy shade to conceal information displayed on a screen of a computer monitor, comprising:

a piece of lightweight, flexible material of a shape and size to cover the viewing area of the screen and provide concealment of the information displayed on the screen when said material is in a down position,

wherein said material is attached to a top portion of the computer monitor by a hook and loop fastener such that said material covers the front of the screen when said material is in the down position.

7. The privacy shade of claim 1, wherein the flexible material is cloth.

8. The privacy shade of claim 1, wherein the flexible material is plastic.

9. The privacy shade of claim 1, wherein the shape of said material is a rectangle.

10. The privacy shade of claim 1, wherein said material may be folded over the computer monitor to an up position.

11. A privacy shade to conceal information displayed on a display device, comprising:

a piece of lightweight, flexible material of a shape and size to cover the viewing area of the display device and provide concealment of the information displayed on the display device when said material is in a down position, and

wherein said material is attached to a top portion of the display device by a hook and loop fastener such that said material covers the viewing area of the display device when said material is in the down position.

17. The privacy shade of claim 11, wherein the flexible material is cloth.

18. The privacy shade of claim 11, wherein the flexible material is plastic.

19. The privacy shade of claim 11, wherein said material may be folded over the display device to an up position.

20. The privacy shade of claim 11, wherein said display device is a video display.

21. The privacy shade of claim 1, wherein one portion of said hook and loop fastener is placed on the center of said top portion of said computer monitor and the other portion of said hook and loop fastener is placed on the center of a top portion of said material.

22. The privacy shade of claim 11, wherein one portion of said hook and loop fastener is placed on the center of said top portion of said display device and the other portion of said hook and loop fastener is placed on the center of a top portion of said material.

23. The privacy shade of claim 1, wherein said material is attached to a top portion of the computer monitor by a first hook and loop fastener and a second hook and loop fastener, wherein one portion of said first hook and

loop fastener is placed on a right end of said top portion of said computer monitor and the other portion of said first hook and loop fastener is placed on a right end of a top portion of said material, and wherein one portion of said second hook and loop fastener is placed on a left end of said top portion of said computer monitor and the other portion of said second hook and loop fastener is placed on a left end of a top portion of said material.

24. The privacy shade of claim 11, wherein said material is attached to a top portion of the display device by a first hook and loop fastener and a second hook and loop fastener, wherein one portion of said first hook and loop fastener is placed on a right end of said top portion of said display device and the other portion of said first hook and loop fastener is placed on a right end of a top portion of said material, and wherein one portion of said second hook and loop fastener is placed on a left end of said top portion of said display device and the other portion of said second hook and loop fastener is placed on a left end of a top portion of said display device.

25. The privacy shade of claim 7, wherein the flexible material is a cotton material.

26. The privacy shade of claim 17, wherein the flexible material is a cotton material.

27. The privacy shade of claim 7, wherein the flexible material is a cotton blend material.

28. The privacy shade of claim 17, wherein the flexible material is a cotton blend material.

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Appl. No. 10/775,954

Evidence Appendix

Exhibit A	U.S. Patent No. 6,188,450 to Coons
Exhibit B	U.S. Patent No. 5,499,793 to Salansky

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Christina Moschella
Appl. No. 10/775,954

Related Proceedings Appendix

None.